THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NOs.1603, 1905, 1916, 1926 and 1999 of 2006

Dated: 03-02-2006

Between:

Mathuru Srinivasa Reddy and others.

……Petitioners

AND

The Government of A.P., by its Principal Secretary to Government (Irrigation), Hyderabad and others.

……Respondents

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NOs.1603, 1905, 1916, 1926 and 1999 of 2006

COMMON ORDER:

In all these writ petitions, the petitioners are the members of Water Users' Associations ('WUA' for brevity) in various places. After expiry of the term of the elected bodies, elections were notified for all these associations in April, 2005, as ordered by the District Collector, who is the District Election Authority ('DEA' for brevity) in whom the power of superintendence, direction, control and conduct of elections is vested. It appears at the behest of some of the voters, who made complaints either directly or through respective elected members of legislative assembly, the Government issued orders staying the elections and further directing

the DEA to notify elections in the first week of January, 2006, after rectifying various mistakes pointed out by the complainants in the preparation of voters list of WUAs. When proper authorities, who are taking necessary action to complete the elections by first week of January, 2006 as ordered purporting to act on the complaints received by the voters and M.L.As that there are mistakes in the voters list, Government again stayed elections directing the DEA to conduct elections on 06-02-2006 and 07-02-2006. Aggrieved by this, the petitioners filed these writ petitions.

In W.P.Nos.1603 and 1999 of 2006, the Government orders in G.O.Rt.No.42, Irrigation and Command Area Development (General.IV) Department, dated 05-01-2006, whereby and whereunder the elections to WUAs of Mudivarthi Bit-1 and Vidavalur in Nellore District, were stayed, were challenged. In W.P.No.1916 of 2006, G.O.Rt.No.46, Irrigation and Command Area Development (General.IV) Department, dated 06-01-2006, staying the elections to WUAs of Jannaram and Vallabhi in Khammam District is assailed. In other two writ petitions, the grievance of the petitioners is that at the behest of the Authorized Officer or the Appellate Authority as per the Rules, a large number of voters of WUAs were deleted and considerable number of ineligible persons were added as voters. In all these writ petitions, similar complaint is made and it is contended that if the elections are allowed to go-on on 06-02-2006 or thereafter with reference to the voters lists which are not prepared as per the relevant Rules, the same would be illegal and in contravention of the provisions of the Andhra Pradesh Farmers' Management of Irrigation Systems Act, 1997 ('the Act' for brevity), the Andhra Pradesh Farmers' Management of Irrigation Systems (Delineation and Formation of Water Users Associations) Rules, 2003 (hereinafter called 'the Delineation Rules') and the Andhra Pradesh Farmers' Management of Irrigation Systems (Conduct of Elections) Rules, 2003 (hereinafter called 'the Election Rules'). Therefore, while seeking invalidation of orders of the Government, the petitioners prayed for a direction to the Competent Authority to conduct elections after duly rectifying the mistakes pointed out by the petitioners and after considering the objections/appeal petitions already filed by them before the Appellate Authority as per Rule 10 of the Delineation Rules.

When the matter was heard yesterday and also today, elaborate submissions are made by the learned counsel appearing for the petitioners, M/s B. Purushotham Reddy, Mr. M. Rajamalla Reddy, Mr. Kowturu Vinaya Kumar, Mr. A Chandraiah Naidu and Mr. Sudhir Kumar and these submissions are on the lines pointed out hereinabove. They also submit that pursuant to various Government orders issued, for a second time staying elections to WUAs the Competent DEA has not so far issued any election notification and therefore, they request that the elections to these WUAs can be held by the District Collector after duly rectifying the various mistakes in the preparation of voters list.

The learned Assistant Government Pleader for Irrigation Ms. K. Vedhavathi, placed reliance on a judgment of this Court in **Manga Ram Murthy v. District Collector, Warangal** and submits that even if the claims and objections by the petitioners are not finally disposed of, still the elections cannot be

postponed. According to the learned Assistant Government Pleader when it was brought to the notice of the Government about the mistakes that crept into the voters list, in the larger public interest, the Government stayed the elections while directing the DEAs to conduct elections after rectifying the mistakes. Therefore, she would submit that the writ petitions are liable to be dismissed.

Before further proceeding, it is necessary to refer to Government orders which were issued in relation to WUAs of Mudivarthi Bit-1 and Vidavalur in Nellore District. Be it noted, the intent language contained and tenor of the other Government order/orders in relation to other WUAs is the same and therefore, it is suffice to refer to these two Government orders which reads as under:

IRRIGATION & COMMAND DEVELOPMENT (GENERAL IV) DEPARTMENT

G.O.Rt.No.496 Dated 23.04.2005

Read the following:

1. G.O.Ms.No.20, I&CAD (CAD.IV) Dept., Dt.20.02.2003.
2. From Smt.Magunta Parvathamma, M.L.A.,Kavali, Nellore District, Representation dated 19.04.2005.
3. From Sri P.Srinivasulu Reddy, M.L.A., Kovur, Nellore District. Representation dated 21.04.2005 to 22.04.2005. Addressed to the Hon'ble Minister for Major Irrigation.
4. From Sri K.Narayana Swamy, M.L.A., Sathyavedu, Chittoor District, Representation Dt.22.04.2005. Addressed to the Hon'ble Minister for Major Irrigation.

ORDER:

Smt.Magunta Parvathamma, MLA, Kavali, Sri P.Srinivasulu Reddy, MLA., Kovur & Sri K.Narayana Swamy, M.L.A., Sathyavedu have represented that certain discrepancies are noticed in the voters list which needs to be rectified and requested to grant stay for the elections of certain Water Users Associations in Nellore District which is scheduled to be held on 25.04.2005.

2 . In exercise of the powers conferred in Section 4(5) of the A.P.Farmers Management of Irrigation Systems Act, 1997 and after careful examination of the representation 2nd read above, Government hereby grant stay orders for the conduction of elections to the following Water Users Associations, Nellore District until further orders.

1. Brahmanakraka Major I&II W.U.As, in Jaladanki Village & Mandal.
2. L.R.Agraharam Jaladanki Major.I W.U.A. in Jaladanki Village & Mandal.
3. Mudivarthi W.U.A. Bit.I, Mudivarthi Village, Vidavalur Mandal.
4. Vidavalur W.U.A., Vidavalur Village & Mandal.
5. Padamati Palem W.U.A., Sangam Mandal.
6. Nagula Vellatur W.U.A., (Somasila Project Canal), Nagula Vellatur Village, Chejerla Mandal.

7. Taiamenchi W.U.A., Kodavalur Mandal.

8. Bit-II W.U.A., Gandavaram Village, Kodavalur Mandal.

9. Nandimale W.U.A. Nandimale Village, Pellakur Mandal.

10. Madineni Palem W.U.A., Madineni Palem Village, Pellakur Mandal.

2. The Collector, Nellore District shall verify the voters lists of the above said Water Users Associations and submit a detailed report to Government at an early date.

A plain reading of the above Government Order would show that three Hon'ble members of Legislative Assembly represented to the Government that discrepancies are noticed in the voters list which need to be rectified and therefore, they requested to stay the elections which was scheduled on 25-04-2004. The Government in purported exercise of power under proviso to sub-Section (5) of Section 4 of the Act, thought it fit to stay the conducting elections, *inter alia,* to WUAs of Mudivarthi Bit-1 and Vidavalur in Nellore District. Whatever be the reason, the Government again issued orders directing the DEA, Nellore to conduct elections on 07-01-2006. Pursuant to such directions, the DEA issued election notification on 03-01-2006 (for WUAs of Mudivarthi Bit-1 and Vidavalur) and the elections were scheduled on 07-01-2006. Again on 05-01-2006, Government issued G.O.Rt.No.42, Irrigation and Command Area Development (General.IV) Department, dated 05-01-2006, which reads as under:

IRRIGATION & COMMAND AREA DEVELOPMENT (GENERAL.IV)

DEPARTMENT

G.O.Rt.No.42, Dated 05-01-2006.

Read the following:

1. G.O.Ms.No.20, I & CAD (CAD.IV) Dept., Dt.20-02-2003.

2. Sri K. Koduru Prabhakara Reddy, residentof Mudivarthi (V) Vidavalur (M), Nellore District.

3. District Collector, Nellore, Rc.No.D3/89/2006, dated 05-01-2006.

ORDER:

In the reference 2nd cited, Sri K. Koduru Prabhakara Reddy, resident of Mudivarthi (V), Vidavalur (M), Nellore District has requested for grant of stay for conducting election to Mudivarthi Bit – I Water User Association and Vidavalur Water User Association in Nellore District as there are mistakes in the voter's list of the above WUAs.

Sri K. Koduru Prabhakara Reddy, resident of Mudivarthi (V) Vidavalur (M), Nellore District has represented to the Government that the Voters List are not correctly prepared for the following Water Users Associations and requested to postpone the elections to these Water Users Associations which are scheduled to be held on 07-01-2006.

Sl.No. Name of the WUA Mandal District

1. Mudivarthi Bit-I Vidavalur Nellore

2. Vidavalur Vidavalur Nellore

In exercise of the powers conferred in Section 4(5) & (4(6) of the A.P. Farmers Management of Irrigation Systems Act, 1997 and after careful examination of the petition 2nd read above, Government hereby order that the Elections to the above Water Users Associations in Vidavalur Mandal, Nellore District are to be postponed and **conduct the elections on 06-02-2006 and 07-02-2006 duly rectifying the mistakes in Voters list.**

(emphasis supplied)

A reading of the above G.O. would show that this time a resident of Mudivarthi village approached the Government requesting stay of conduct of elections to WUAs of Mudivarthi Bit-I and Vidavalur, alleging that there are mistakes in the voters list. The Government again postponed the conduct of elections and further directed to conduct elections on
06-02-2006 and 07-02-2006 (duly rectifying the mistakes in the voters list). Be it noted that even in G.O.Rt.No.46, Irrigation and Command Area Development (General.IV) Department, dated 06-01-2006, which is assailed in W.P.No.1916 of 2006, the Government directed the DEA, Khammam to conduct elections on 06-02-2006 and 07-02-2006 duly rectifying the mistakes in the voters list for the above WUAs. It is the case of the petitioners that even while the elections were proposed in April, 2005, the voters list was prepared in accordance with Rule 9 of the Delineation Rules and therefore, there was no occasion for the Government to come to the conclusion that there are mistakes or discrepancies in the voters list. It is no doubt true when once the voters list is prepared as per Rule 9 (6) of the Delineation Rules duly following he procedure under Sub Rules (1) to (5) of Rule 9, it shall be final subject to any order in appeal as per Rule 10 of the Delineation Rules. It is the case of the petitioners that when once voters list is prepared as per Rule 9 of the Delineation Rules, it is final and if any person is aggrieved, he has to await conduct of elections and challenge the elections before duly constituted Election Tribunal as per Rule 148 of the Election Rules. There is considerable force in the submission made by the petitioners. In **Manga Ram Murthy's case** (supra), after referring to the relevant case law, this Court summarized the principles as under:

> The principles of law regarding judicial review in election matters are well settled. These principles in brief may be summarized as under:
>
> i. If the election law creates rights and provides for enforcement by a Special Tribunal, ordinarily, a writ petition cannot be maintained questioning election process including preparation of voters' list;
>
> ii. When an election dispute is considered, it must be kept in mind that the right to vote, contest or dispute the election is neither fundamental right nor a common law right, but is a right regulated by statutory provisions. It is therefore not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India by-passing the machinery designated by

the Statute must be followed before the authority designated therein;

iii. When the election process is set in motion by issuing election notification, all the disputes including illegalities, irregularities and improprieties allegedly committed by the election authorities in preparing the voters list, conducting elections, counting votes, etc., should be brought before a Special Tribunal by means of an election petition and writ petition is not proper remedy;

iv. In exercise of powers under Article 226 of the Constitution this Court cannot ordinarily interfere in election matters whatever be the illegality alleged when once the election process is commenced by issuing a direction to include the names of certain voters, delete certain voters and/or undertake the exercise of preparation of voters list afresh;

v. Even if the claims and objections by prospective voters are not finally disposed of and even if the objections are justified as to the allegations of contraventions of law, still the election process cannot be arrested. The elections must be allowed to go on on the basis of electoral list which is in force on the date of making nominations;

vi. Even if there is non-compliance with the provisions of the Act, Rules or Orders made under the Act, the dispute has to be brought before the duly constituted Election Tribunal. Even in such an event, the Election Tribunal can interfere with the result of the election only when it materially affects the result of the returned candidate.

In these cases, however, the situation is altogether different. It is no doubt true as per Section 4 (5) of the Act read with Rule 4 (1) and 4 (3) and other Rules contained in Chapter III of the Election Rules, the District Collector is the ultimate authority to conduct elections from the stage of issuing notification till the stage of declaration of results. The proviso to Sub-section (5) of Section 4 of the Act confers an extraordinary power on the Government to postpone the elections, for which reasons are to be recorded in writing. The Act or the Rules are silent in what circumstances the Government can postpone or stay the elections. In a given case if there is breakdown of law and order affecting the peaceful and lawful conduct of elections or the area is seriously affected by a natural calamity rendering the conduct of elections an impossibility, it is possible for the Government to postpone the elections. There could also be different situations. For instance, if a WUA was found to have 800 members in it as per Section 3 (4) of the Act and ultimately in the voters list only a negligible number of persons were included, it would certainly a factor which cannot be ignored by the Government while exercising power under the proviso to Section 4 (5) of the Act. The Act has sacred purpose. It envisages the participation of farmers in organizations i.e., WUAs for the proper and efficient use of irrigation water and equitable distribution thereof. Unless and until all the members participate in the affairs of a WUA and unless and until all of them participate in the elections to elect their representatives for proper organization of the affairs of the association as well as management of the water available for distribution, the very purpose and object of the Act would be defeated. Therefore, when a serious complaint is made by no less persons than the elected representatives of the people, that the voters lists are not prepared properly or there are mistakes in the voters lists and on that ground if the elections are postponed, the same cannot be faulted. In the dynamics of democracy, at gross-root level, the sprit of democracy can be achieved only by ensuring the participation of all persons concerned and democracy cannot be made a mockery by

conducting a farce of election. Therefore, this Court does not find any infirmity in the Government orders staying the elections, though in one case it was stayed twice.

The Government in both the Government orders referred to hereinabove directed the DEA to conduct elections on 06-02-2006 and
07-02-2006 duly rectifying the mistakes in the voters list. There is no material before this Court to show that the DEA or any of the officers under him have completed this exercise. Therefore, unless and until the voters list is prepared properly rectifying all mistakes and considering the appeals/representations of the persons who sought redressal regarding their deletion from the voters list or addition of ineligible voters, the elections cannot be conducted even according to the Government orders. In this background and also *ex debito justitiae,* this Court can intervene, as election authority has not set the election process in motion.

The writ petitions are, therefore, disposed of in the following manner. As directed by the Government in their orders in G.O.Rt.No.42, dated 05-01-2006 (in relation to WUAs of Mudivarthi Bit-1 and Vidavalur, Nellore District) and G.O.Rt.No.46, dated 06-01-2006 (in relation to WUAs Jannaram, Vallabhi and Mudigonda, Khammam District), the District Election Authorities i.e., the District Collector, Nellore and District Collector, Khammam, shall first get all the voters lists verified through the Officers of Irrigation Department not below the rank of Assistant Executive Engineer, publish voters lists as required under Rule 9 (6) of the Delineation Rules and conduct elections ten days thereafter. If any person is aggrieved by additions or deletions in the voters lists published as per Rule 9 (6) of the Delineation Rules, such persons may approach the Revenue Divisional Officer by way of appeal under Rule 10 of the Delineation Rules as amended by G.O.Ms.No.7, dated 17-01-2005, for appropriate redressal. Needless to add that after voters lists are prepared as directed hereinabove, the District Election Authorities shall conduct elections. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

The learned Assistant Government Pleader also brought to the notice of this Court that the District Collector, Khammam, has already postponed the elections. The same is recorded.

The writ petitions, with the above observations and directions, are accordingly disposed of. No costs.

_____

(**V.V.S.RAO, J**)

03-02-2006

Note:

1. The learned Assistant Government Pleader

is directed to inform this order to the DEAs of Khammam,

Krishna, Nellore and Prakasam Districts immediately.

2. Issue CC by 06-02-2006
B/o

ghn